

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



BRIAN L. SCHWALB
ATTORNEY GENERAL

February 23, 2023

Transmitted via email

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington DC 20515

Re: Efforts to Disapprove of the District of Columbia's Revised Criminal Code Act of 2022, D.C. Act 24-789, and Local Resident Voting Rights Amendment Act of 2022, D.C. Act 24-640

Dear Senator Schumer:

As the District of Columbia's independently elected Attorney General and chief legal officer, I have the duty to enforce and defend the District of Columbia's laws. I understand that some of your colleagues are advocating for the Senate to formally disapprove two recently enacted local D.C. laws: the Revised Criminal Code Act of 2022, which modernizes and clarifies the District's antiquated criminal code (last comprehensively addressed in 1901), and the Local Resident Voting Rights Amendment Act of 2022, which allows resident non-citizens to vote in local (not federal) elections. Were the Senate to do so, it would mark the first time in three decades that Congress overturned D.C. law. For the following reasons, I urge the Senate not to override the democratically expressed will of District of Columbia residents.

The Revised Criminal Code Act (RCCA), based on the Model Penal Code, is designed to improve the District's criminal justice system and make the District safer. The majority of the Act's hundreds of provisions are noncontroversial, providing essential updates and clarifications to a criminal code that is in desperate need of modernization and streamlining. Doing so enhances the effective and efficient administration of justice, resulting in enhanced public safety. Overturning these necessary improvements would leave D.C. with an existing status quo that is not acceptable to anyone.

The few aspects of the law that are controversial relate to penalties for criminal offenses. However, the conclusory accusation that the RCCA is "soft on crime" is not fair or accurate. The RCCA recognizes that some types of crime are more serious than others and is designed to ensure that sentencing reflects the seriousness of the crime. The criticisms of the law as "soft" fail to acknowledge that the RCCA actually *increases* maximum sentences for many crimes, including armed robbery, sexual assault, and attempted murder; allows for sentencing enhancements when crimes are committed with weapons; and right-sizes penalties for certain crimes to match current judicial practices. For example, under the RCCA, the maximum penalty for attempted murder goes

from five years to twenty-two and a half years. And the maximum sentence for armed carjacking – 24 years – is more severe than sentences in at least eleven other states (including Kentucky). Equally important, in getting rid of mandatory minimum sentences for all crimes other than first degree murder, the RCCA recognizes that long prison sentences – which disproportionately impact black and brown communities – do not deter crime or make communities safer. Our country’s history and studied data confirm just the opposite. For these reasons, it is questionable whether congressional efforts to thwart local legislative reforms are really making D.C. safer. Given the absence of any analysis or evidence to support the disapproval efforts, they appear to be a thinly-veiled attack on the rights of a majority black and brown city to govern itself. A majority of states have adopted similar measures proposed by the RCCA: 29 states (including Kentucky) have modernized their criminal justice laws after the Model Penal Code, and 38 states (including Kentucky) recognize the right to a jury trial when liberty interests are at stake.

Ironically, many who have expressed support for overriding these two D.C. local laws have long espoused the virtues of freedom from federal government interference and respect for states’ rights. They have argued that myriad matters, including criminal justice, reproductive freedom, and voting rights, are best left to states and localities. The current calls to formally disapprove District law contradict those principles and would substitute the will of federal politicians for the decisions of locally elected leaders.

The current disapproval efforts disrespect the soundness of the democratic process that twice affirmed near-unanimous adoption of both laws. Indeed, the RCCA is a result of a more than 10-year review and debate by experts from across the country, including scholars, law enforcement, prosecutors, and judges from the American Law Institute, as well as local criminal justice stakeholders. Further, the Council of the District of Columbia considered these reforms in several public hearings and legislative sessions; to my knowledge, the Council was never made aware of concerns or resistance by any member of the Senate to the law. To erase the exhaustive work that informed these laws without any study, evidence, or analysis would be careless. As the District of Columbia’s elected Attorney General, I am confident that the studied examination and reforms of our criminal code, designed to be phased in over several years, will lead to improved administration of criminal justice, improved confidence in our criminal justice system, and therefore, to enhanced public safety in our Nation’s Capital.

I am equally confident that politicians from other states do not know more or care more about how to make D.C. safer than the District residents who live and work here. Washington, D.C. is home to nearly 700,000 residents who pay more federal taxes per capita than any other jurisdiction in the country and more total federal taxes than 23 states. D.C. residents have fought and died in our country’s wars. We are a community of parents, teachers, small business owners, police officers, and many others who choose to live in the Nation’s Capital. Senators who are elected by residents of other states, who do not themselves live in the District of Columbia, who have not participated in our local civic discourse, and who are not accountable to District voters, should not substitute their judgment for the democratically expressed views of District residents who lack voting representation in Congress yet will be most directly impacted by the legislation.

I am well aware of the Constitutional power granted to Congress in Article I, Section 8, Clause 17. However, merely because Congress has the power to act does not mean that it should exercise that power. Particularly given Congress’ stated intent when passing the Home Rule Act

to empower the District “to the greatest extent possible” with the responsibility of “legislating upon essentially local District matters,” I urge the Senate to reject calls for disapproval of D.C. local laws, and instead, to stand up for democratic values, stand against disenfranchisement, and stand with the residents of our Nation’s capital.

Should you or any of your Senate colleagues have any questions about, or wish to discuss, the Revised Criminal Code Act of 2022 or the Local Voting Rights Amendment Act of 2022, I will make myself and my team available to do so. On behalf of the District of Columbia, I appreciate your careful consideration of this matter.

Sincerely,



Brian L. Schwalb
Attorney General

cc: The Honorable Mitch McConnell, Minority Leader